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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,098	10/21/2003	J. Bruce Kolowich	VTP-10003/36	3741
25006	7590	01/27/2005	EXAMINER	
GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			WALBERG, TERESA J	
			ART UNIT	PAPER NUMBER

3742

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/690,098	KOLOWICH, J. BRUCE	
	Examiner	Art Unit	
	Teresa J. Walberg	3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/17/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-43 is/are pending in the application.
- 4a) Of the above claim(s) 36,37 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-36 and 38-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The disclosure is objected to because of the following informalities: The preliminary amendment of 10/21/03, which added a claim for priority to application 09/980,983 and PCT/US00/13852 appears to have been intended for a different application, since the application referred to does not contain a common disclosure with the present application. Alternatively, it is possible that applicant intended to claim priority to a different application. Applicant is required to correct or delete this claim for priority.

Appropriate correction is required.

2. Attached is a copy of the Form PTO-1449 with all documents initialed.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 36, 37, and 43 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made in the reply filed on 12/17/04. Since applicant did not specify whether the election was made with traverse or without traverse, the election will be treated as having been made **without** traverse.

5. Claims 38 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd (3,766,975) in view of Rollor (3,463,140).

Todd discloses (see Fig. 2) a liquid receptacle for rapidly lowering the temperature of a beverage and maintaining the temperature of the liquid in a warm range including an inner vessel (19) having an outward taper and terminating in a rim (24), an insulated outer shell (11, 27) spaced from the inner vessel (19) defining an interstitial chamber (26) there between, the outer shell having an inner surface, an outer surface, and a lip for drinking (27), the inner surface of the outer shell (11, 27) having a circumferentially outwardly extending recess defined therein (at 34), the recess being spaced from the lip (27), the rim (24) of the inner vessel (19) being in sealing engagement with the recess (at 34) in the inner surface of the outer shell (11, 27).

While the claims require the use of a phase change material, Todd discloses the heat transfer material being water used at a temperature at which it is not a phase change material.

Rollor teaches the use of a phase change material in an interstitial space of a drinking cup. See Fig. 1 and abstract.

It would have been obvious in view of Rollor to use a phase change material as the heat transfer material of Todd since a phase change material has greater heat capacity and would provide more rapid cooling and a longer time of temperature stability.

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6. Claims 24-31, 34, 35, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd (3,766,975) in view of Rollor (3,463,140) as applied to claims 38 and 42 above and further in view of Muenchen (1,721,311).

Todd in view of Rollor discloses a liquid receptacle having the claimed structure with the exception of an evacuated void to better insulate the receptacle.

Muenchen discloses the use of an evacuated void (4) to insulate a vessel (see Figure) having a heat transfer material (11).

It would have been obvious in view of Muenchen to use an evacuated void as insulation for the liquid receptacle of Todd in view of Rollor, the motivation being to better prevent heat loss.

7. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd (3,766,975) in view of Rollor (3,463,140) and Muenchen (1,721,311) as applied to claims 24-31, 34, 35, 39, and 40 above and further in view of Lane et al (5,755,988).

Todd in view of Rollor and Muenchen discloses a liquid receptacle having the claimed structure with the exception of the phase change material being a fatty acid specifically palmitic acid.

Lane et al disclose the use of a fatty acids such as palmitic acid used as a heat transfer and storage material.

It would have been obvious in view of Lane et al to use a fatty acids such as palmitic acid as a heat transfer and storage material for the liquid receptacle of Todd in view of Rollor, the motivation being to more accurately achieve the desired temperature of the beverage.

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 38, 40, 41, and 42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6, 7, 8, and 17 of U.S. Patent No. 6,634,417. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 38 of the present application is substantially identical to claim 6 of the patent except for lacking the phrase "said outer shell having an insulating layer disposed between said inner and outer surfaces". Since the claim being examined is merely broader than the claim patented before, the patented claim "anticipates" the application claim.

Claim 40 of the present application is substantially identical to claim 7 of the patent, with the exception of the difference noted above due to its dependency from claim 38.

Claim 41 of the present application is substantially identical to claim 8 of the patent, with the exception of the difference noted above due to its dependency from claim 38.

Claim 42 of the present application is substantially identical to claim 17 of the patent, with the exception of the difference noted above due to its dependency from claim 38.

10. Claim 41 would be allowable if applicant were to overcome the double patenting rejection, set forth in this Office action and the claim were amended to include all of the limitations of the base claim and any intervening claims.


11. The following is a statement of reasons for the indication of allowable subject matter: The prior art does not disclose an apparatus of the type claimed wherein the rim of the inner vessel includes a bulbous lip which is in sealing engagement with an arced recess in the inner surface of the outer shell.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Staggs, Glassman, Paquin, Chen, Ryan, Bond, Stoner et al, and Johnstone are cited to show vessels to control the temperature of beverages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teresa J. Walberg whose telephone number is 571-272-4790. The examiner can normally be reached on M-F 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Teresa J. Walberg
Primary Examiner
Art Unit 3742

tjw